Supreme Court, U.S.
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No. 93-1627

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

UNITED STATES LINES, INC.,

Petitioner,

—vs.—

PUBLIC ADMINISTRATOR OF THE COUNTY OF NEW YORK, ADMINISTRATOR OF THE ESTATE OF ALFREDO VALVERDE, DECEASED,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

REPLY BRIEF

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DEFENDANT PROPERLY RAISED THE ISSUES PRESENTED IN THE COURTS BELOW, AND IT HAS COMPLIED WITH THE RULES OF THIS COURT.

Instead of responding to the substance of Defendant's Petition for a writ of Certiorari, which clearly set forth two substantial issues of maritime law on which the state court failed to follow controlling federal maritime law, Plaintiff argues, in its Brief in Opposition, that Defendant failed to present the issues in the courts below and to explain adequately the method or manner of raising those issues in the state courts and the way in which they were passed upon on appeal. Although Defendant believes that its explanation of the prior

proceedings in the Petition for a writ of Certiorari met the requirements of this Court's Rule 14 with appropriate brevity, a more detailed explanation of the method or manner of raising the issues below is set forth below, and excerpts from Defendant's briefs to the state appellate courts demonstrating explicitly how the issues presented in the Petition were preserved on appeal are annexed as appendices hereto. All relevant appellate decisions were annexed to the Petition for a writ of Certiorari. (Appendices A and B to the Petition)

A. Prejudgment Interest

Prejudgment interest was awarded for the first time when it was added by the clerk in the judgment entered on May 7, 1992. (Appendix D to the Petition) Defendant preserved the issue of whether prejudgment interest may be awarded on damages under the Jones Act by moving to strike prejudgment interest from the judgment, and Defendant's motion was denied by the trial court in a Memorandum Decision dated May 26, 1992. (Appendix C to the Petition) Defendant then appealed the judgment, and its brief included a section entitled "federal law precludes CPLR § 5002 interest". (Appendix 2, 3a) The Appellate Division not only failed to reverse the award of prejudgment interest, but it extended the award of prejudgment interest back to the date of the verdict. (Appendix B to the Petition) Defendant's Notice of Motion for Leave to Appeal to the New York Court of Appeals included a section entitled "The Court below erred by awarding prejudgment interest on damages for pain and suffering." (Appendix 3, 4a) However, the Court of Appeals denied Defendant's motion for leave to appeal. (Appendix A to the Petition)

Plaintiff's contention that the Petition failed to comply with Rule 14.1(k) because it did not include in the Appendix the trial court's interim Order of July 31, 1991 denying prejudgment interest is incorrect, because that order was subsequently reversed by the trial court when it awarded prejudgment interest. (Appendices C & D to the Petition) To

ing a copy of the Order of July 31, 1991 hereto as Appendix 1. On its face, the said Order is contrary to the final outcome both in the trial court and in the appellate courts.

B. Damages Proven in a Foreign Currency

Plaintiff had the burden of proving damages for loss of services, but the only evidence of the value of lost services offered by Plaintiff was testimony that the rent charged to decedent and his family was reduced by approximately 10,000 Brazilian Cruzados because of services he performed. (Appendix F to the Petition) Plaintiff failed to offer any evidence of the value of the Cruzado in U.S. Dollars. Defendant's Request to Charge No. 36, which the Court refused to charge, would have instructed the jury to determine "the cost if paid for" of decedent's services. (Appendix G to the Petition) By submitting Request to Charge No. 36, Defendant preserved the issue that Plaintiff is only entitled to the monetary value of decedent's lost services. As of that point, there had been no conversion of damages proven in a foreign currency.

In its post–trial motions, Defendant argued that the award for lost services should be set aside because there was no proof of the monetary value of the damages awarded to Plaintiff for lost services and specifically no evidence of the value of the Brazilian Cruzado. (Appendix J for the Petition) Defendant's brief to the Appellate Division included a section entitled "Plaintiff–respondent did not prove the recoverable value for loss of decedent Valverde's services or the amounts for such loss, which are excessive." (Appendix 2, 3a) Defendant also pointed out in its brief to the Appellate Division: "Under controlling Federal maritime law, any approximately 10,000 cruzados monthly lost value of services should be converted to U.S. dollars at the exchange rate on the November 30, 1983 accident date, *Conte v. Flora Mercante Del Estado*, 277 F.2d 664, 670–671 (2d Cir. 1960), which plaintiff–respondent did not prove." (Appendix 2, 3a) However, the Appellate Division simply affirmed the damage award in its entirety. (Appendix B to the Petition) Defendant's Notice of Motion for Leave to

Appeal to the Court of Appeals included a section entitled "The court below erred by failing to convert Cruzados to Dollars as of the date of death in determining the value of lost services provided by decedent in Brazil." (Appendix 3, 4a) As noted previously, the Court of Appeals denied Defendant's motion for leave to appeal.

CONCLUSION

For all the reasons set forth in the Petition for a writ of Certiorari, it is respectfully submitted that this Court should grant the Petition.

Dated: May 5, 1994

Respectfully submitted,

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APPENDIX

Appendix 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 28

Index No.: 17312/85

PUBLIC ADMINISTRATOR, etc.,
Estate of ALFREDO VALVERDE, dec'd,

Plaintiff,

—against—

UNITED STATES LINES, INC.,

Defendant.

ORDER

DONTZIN, J.:

In this wrongful death action, the plaintiff sued the defendant on both the theories of negligence under the Jones Act and unseaworthiness under the General Maritime Law. The jury, in response to interrogatories submitted by the Court, found the defendant liable on both theories and awarded plaintiff damages for loss of services, loss of support for the widow and children, loss of nurture and guidance for the children, and for the conscious pain and suffering and mental anguish. The interrogatories did not request the jury to allocate its award for damages between the Jones Act and unseaworthiness claims; nor did either party ever ask the Court to provide for such an allocation in its interrogatories.

The law is clear in this type of case that a plaintiff can only receive prejudgment interest on the unseaworthiness portion

of the jury award, and that the plaintiff is not entitled to any prejudgment interest unless the jury apportions the damages between the Jones Act claim and the unseaworthiness claim *McPhillamy v. Brown & Root, Inc.*, 810 F.2d 529 (5th Cir. 1987).

Since the jury did not allocate its damage award between plaintiff's two claims, nor would there have been any realistic basis for apportioning the damages even if plaintiff had sought such an apportionment, this Court will not add prejudgment interest to the jury's award.

Dated: July 31, 1991

/s/ MICHAEL J. DONTZIN
Michael J. Dontzin
J.S.C.

Appendix 2

Excerpts from the Brief for the Defendant–Appellant, dated February 15, 1993, submitted to the Appellate Division, First Department, of the Supreme Court of the State of New York

II. Plaintiff–respondent did not prove the recoverable value for loss of decedent Valverde's services or the amounts awarded for such loss.

* * *

Under controlling Federal maritime law, any approximately 10,000 cruzados monthly lost value of services should be converted to U.S. dollars at the exchange rate on the November 30, 1983 accident date, *Conte v. Flora Mercante Del Estado*, 277 F.2d 664, 670–671 (2d Cir. 1960), which plaintiff–respondent did not prove.

* * *

V. Federal law precludes CPLR § 5002 interest.

When plaintiff–respondent sought to enter judgment, the Clerk included $258,125.87 postverdict interest (R13) under CPLR 5002. Justice Dontzin denied (R32–33) defendant–appellant's CPLR 5019 (a) application to strike that interest (R42–45).

* * *

Monessen Southwestern R. Co. v. Morgan, 486 U.S. 330 (1988), holds that an FELA plaintiff in a Pennsylvania Commonwealth court is not entitled to prejudgment interest despite Pennsylvania Rule 238 of Civil Procedure requiring prejudgment interest on certain recoveries for personal injuries.

* * *

Appendix 3

Excerpts from Defendant's Notice of Motion for Permission to Appeal, dated November 8, 1993, submitted to the New York Court of Appeals

ARGUMENT

Summary of Argument

* * *

Damages of $900,000 for pain and suffering were awarded by the trial court on grounds that decedent presumably survived for three hours (at $300,000 per hour) after being washed overboard from the S.S. AMERICAN TRADER in heavy seas and that the vessel negligently failed to search properly for decedent. Federal maritime law precludes prejudgment interest on recoveries pursuant to the Jones Act, 46 U.S.C. § 688, and a recovery predicated on a negligent failure to search can only arise under the Jones Act and not general maritime law. Nevertheless, the trial court awarded prejudgment interest on the entire judgment from the date of the verdict, August 8, 1990, in reliance on an erroneous reported decision by the First Department that should be overruled by this Court, *Haggerty v. Moran Towing & Transportation Co.*, 162 App.Div. 2d 189, 445 N.Y.S. 2d 314 (1st Dep't 1990). The Appellate Division's decision in the instant case compounded the trial court's error by directing that prejudgment interest be awarded from the date of the decedent's injury and death, November 30, 1983.

The trial court's awards of $13,200 for past lost services and $42,500 for future lost services also are in conflict with applicable federal maritime law. The only proof of the value of decedent's services lost by his family was testimony that his services "almost halved" the family's monthly rent of 20,000 Brazilian Cruzados (A246–A247), that is, the family's landlord lowered the rent by almost 10,000 Cruzados because of work done by the decedent. Under federal maritime law,

loss of services should have been computed by converting the value of decedent's monthly services into U.S. Dollars as of November 30, 1983, the date of decedent's injury and death.

* * *

I. THE DECISION BELOW IS IN SUBSTANTIAL CONFLICT WITH FEDERAL MARITIME LAW, WHICH GOVERNS THIS ACTION.

A. The Court Below Erred by Awarding Prejudgment Interest on Damages for Pain and Suffering.

* * *

B. The Court Below Erred by Failing to Convert Cruzados to Dollars as of the Date of Death in Determining the Value of Lost Services Provided by Decedent in Brazil.

* * *